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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PINAL COUNTY MENTAL HEALTH NO. MH-200800068	)	2 CA-MH 2008-0006
	)	DEPARTMENT A
	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Honorable Janna L. Vanderpool, Judge

AFFIRMED

James P. Walsh, Pinal County Attorney
By Ronald S. Harris
Florence
Attorneys for Appellee

Mary Wisdom, Pinal County Public Defender
By Jennifer L. Bergeron
Florence
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a hearing held pursuant to A.R.S. § 36-539(B), the trial court found by clear and convincing evidence that appellant is persistently or acutely disabled as the result of a mental disorder, is in need of treatment, and is either unable or unwilling to accept treatment voluntarily. As authorized by A.R.S. § 36-540(A) and (C), the court ordered that

he receive a combination of inpatient and outpatient mental health treatment for a period not to exceed one year, including "at least 25 days . . . [of] local inpatient treatment."

¶2 Appellant contends he was denied due process of law because certain statutes governing applications and petitions for court-ordered mental health evaluations were not strictly followed in his case. First, he contends it was improper for an employee of the screening agency referred to in A.R.S. §§ 36-520 and 36-521 to prepare the application for evaluation required by § 36-520(A) through (C). Second, he maintains the screening agency failed to conduct a proper "prepetition screening" pursuant to A.R.S. §§ 36-501(34), 36-520(D) through (F), and 36-521(A). Third, he asserts the petition for evaluation filed pursuant to A.R.S. § 36-523 violated § 36-523(D), which directs that the petition and other required forms "be filed only by the screening agency which has prepared the petition."

¶3 "[B]ecause civil commitment constitutes a significant deprivation of liberty, the state must accord the proposed patient due process protection." *In re MH 2006-000749*, 214 Ariz. 318, ¶ 14, 152 P.3d 1201, 1204 (App. 2007), *quoting In re Maricopa County MH 90-566*, 173 Ariz. 177, 182, 840 P.2d 1042, 1047 (App. 1992) (alteration in *MH 2006-000749*). The applicable commitment statutes must be strictly construed, *see In re Maricopa County Mental Health No. MH 2003-000058*, 207 Ariz. 224, ¶ 12, 84 P.3d 489, 492 (App. 2004); *In re Pima County Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 567, 863 P.2d 284, 286 (App. 1993), and their requirements scrupulously followed. *See In re Maricopa County Mental Health No. MH 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d 380, 382 (App. 2002); *In re Coconino County Mental Health No. MH 95-0074*, 186 Ariz. 138, 139, 920 P.2d

18, 19 (App. 1996). The mandate of due process "entitles a patient to a full and fair adversarial proceeding." *In re MH 2007-001275*, 219 Ariz. 216, ¶ 13, 196 P.3d 819, 823 (App. 2008); *see also MH 2006-000749*, 214 Ariz. 318, ¶ 14, 152 P.3d at 1204. Here, for the reasons discussed below, we find no denial of appellant's right to due process and affirm the trial court's order.

Factual Background

¶4 The following facts are undisputed in the record below and on appeal. Appellant is a forty-three-year-old man with a long history of mental illness and "numerous" prior hospitalizations. Evidence at the October 2008 hearing on the present petition for court-ordered treatment established that he suffers from undifferentiated schizophrenia, which is characterized in his case by delusional beliefs, paranoia, grandiosity, auditory hallucinations, mood swings, agitation, and lack of insight about his illness. Appellant has been ordered to undergo involuntary mental health treatment on prior occasions. In fact, the most recent such order had expired only weeks before the current proceeding was commenced, necessitated by appellant's discontinuing "outpatient treatment including medications after his court order had expired."

¶5 One of the two psychiatrists who evaluated appellant pursuant to the court's order testified that appellant's adamant resistance to taking medication is the result of his "delusional process and paranoid ideations." "[R]epeatedly" during the evaluation, appellant stated his belief that the doctors wanted to medicate him only to "make [him] weak so people can take advantage of [him.]" Appellant's older sister also testified at the hearing. She

confirmed that appellant had been ill for "many years" and that he believes his medications "mak[e] him sick." She also described the improvements in his behavior and functioning when he is taking his prescribed medications.

Procedural Background

¶6 In this case, Superstition Mountain Mental Health Center (SMMHC) was both the screening agency, *see* A.R.S. §§ 36-501(41), 36-521, and the evaluation agency, *see* A.R.S. §§ 36-501(13), 36-529. Dr. Michael Vines, a medical director of SMMHC, testified that appellant "ha[d] been a patient at [SMMHC] for a number of years." On September 16, 2008, Vines had met with appellant for a routine, medication-monitoring appointment, during which Vines found appellant to be "overtly delusional," "his thinking rambl[ing] from one persecutory belief to another." Appellant told Vines he had stopped taking all but one of the six medications prescribed for him.[1] Vines's observations during that appointment led him to "bec[o]me pretty concerned about [appellant]."

¶7 Subsequently, presumably at Vines's direction, SMMHC crisis evaluator Maria Johnson prepared three forms: an application for involuntary evaluation pursuant to § 36-520, an application for emergency admission for evaluation pursuant to A.R.S. § 36-524,[2] and a prepetition screening report pursuant to § 36-521(B). These documents, together with

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[1]Except for one he took for sleep, appellant told Vines, the medicines "had never helped him" and "only served to make him weak and tired." He did not believe he needed medication and did not "believe that a medicine could help him."

[2]This application for emergency admission appears to have been unwarranted, as the order prepared by the Pinal County Attorney and signed by the court was for "involuntary non-emergency inpatient evaluation" pursuant to § 36-529(A).

separate affidavits by Vines and SMMHC peer support specialist Jennifer Ortiz, accompanied the petition for court-ordered evaluation, which was signed by "Dianna A. Kalandros" as petitioner. The documents were filed together on September 19, along with two signed orders, one directing appellant to submit to an inpatient evaluation at SMMHC and the other directing a sheriff's deputy or detention officer to serve copies of all documents on appellant and SMMHC.

¶8 Following appellant's evaluation by two SMMHC psychiatrists, Drs. Borodkin and Cowley, pursuant to A.R.S. § 36-530, a petition for court-ordered treatment was filed on September 26, 2008, together with an affidavit from each psychiatrist. *See* A.R.S. § 36-533(A), (B). On September 29, appellant moved to dismiss for the reasons now asserted in his first and second issues on appeal. The trial court heard argument on October 1, immediately before the hearing on the petition for court-ordered treatment, and denied the motion to dismiss. Four witnesses then testified at the hearing: the two evaluating psychiatrists, appellant's sister, and Dr. Vines. At the conclusion of the hearing, the court entered the order from which appellant has appealed. The issues raised on appeal pertain only to events that preceded the September 19 order for evaluation.

Issues and Discussion

¶9 Appellant first asserts he was denied due process because the applicant for a court-ordered evaluation should not be the same person who performs the prepetition screening or prepares the petition for evaluation on behalf of the screening agency. He concedes the applicable statutes do not expressly prohibit "the Screener from the Screening

Agency" from preparing the application dictated by § 36-520. Nonetheless, he urges us to find such a requirement implicit in the wording of §§ 36-520(D), 36-521(A), and 36-501(34) collectively. Statutory interpretation presents an issue of law, and our review is de novo. *MH 2006-000749*, 214 Ariz. 318, ¶ 13, 152 P.3d at 1204; *Maricopa County No. MH 2001-001139*, 203 Ariz. 351, ¶ 8, 54 P.3d at 382. "Arizona courts 'follow fundamental principles of statutory construction, the cornerstone of which is the rule that the best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction.'" *In re MH 2004-001987*, 211 Ariz. 255, ¶ 14, 120 P.3d 210, 213 (App. 2005), *quoting Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991).

¶10 We decline to read any such restriction into § 36-520(A), which provides only that "[a]ny responsible individual" may apply for a court-ordered evaluation of a mentally disordered person. In some cases—when the proposed patient does not have a history of mental illness or has not previously been the subject of a court-ordered evaluation or mental health treatment, for example—the applicant and screening agency typically will be separate entities, as the statutes appellant cites—§§ 36-520(D), 36-521(A), and 36-501(34)—do plainly contemplate. *See*, *e.g.*, § 36-520(D) ("The screening agency shall offer assistance to the applicant in preparation of the application."). But the statutes neither mandate that the applicant under § 36-520 be separate from the screening agency nor prohibit what occurred in this case. Had the legislature intended the broad phrase "[a]ny responsible individual" to specifically exclude individuals connected to a mental health screening agency or evaluation

agency, we would expect the statute to explicitly so state. *See Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, ¶ 44, 93 P.3d 486, 499 (2004) ("We think that, if the legislature had intended to limit the statute as the County urges, it would have used language making that limitation clear."); *MH 2004-001987*, 211 Ariz. 255, ¶ 14, 120 P.3d at 213 (declining to read into A.R.S. § 36-539(B) requirement that witnesses be present personally when statute specified only "patient and his attorney shall be present at all hearings") (emphasis omitted).

¶11 As a licensed screening agency, *see* § 36-501(41), SMMHC was charged under § 36-521(A) with assessing "whether there [wa]s reasonable cause to believe" that appellant met the criteria for evaluation. SMMHC was already familiar with appellant and the nature of his illness because he had been a patient at SMMHC "for . . . years." Neither the wording of § 36-520(A) nor common sense suggests that a representative of a screening agency may not serve as the "responsible individual" authorized by statute to apply for a court-ordered evaluation of an existing patient. Indeed, for some persons with profound and chronic mental illness, a mental health agency may be the best, perhaps even the only, source of a "responsible individual" with knowledge of the patient's disability and need for evaluation and treatment. This view finds express support in § 36-524(B), which provides that the applicant for an emergency admission for evaluation "may be a relative or friend of the person, a peace officer, the admitting officer or another responsible person." We therefore reject appellant's contention that he was denied his right to due process when Maria Johnson,

crisis evaluator at SMMHC, prepared the application required by § 36-520 for appellant's latest court-ordered evaluation.

¶12 Next, appellant contends he was denied due process of law because SMMHC failed to conduct a proper "prepetition screening" pursuant to §§ 36-501(34), 36-520(D) through (F), and 36-521(A). Section 36-501(34) defines a prepetition screening as:

> the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

Section 36-521(A) requires "the screening agency" to "provide prepetition screening within forty-eight hours" after receiving an application for evaluation, and § 36-521(B) requires the agency then to "prepare a report of opinions and conclusions."

¶13 Incorporating and expanding upon his first argument, appellant asserts that, because Maria Johnson acted as both "Screener" and "Applicant," she "could not independently 'review' the application . . . [or] independently 'investigate' the facts alleged . . . and . . . did not interview the applicant, because she could not interview herself." Thus, he contends, the screening process itself was flawed and incomplete, and "therefore the prepetition screening report is entirely unreliable." In a response focused more on the screening report than on the actual screening itself, the state counters that a screening report is neither required nor intended to be a "'record of the actions'" of the individual who prepares the report and that the statutes do not "limit who gathers the information to one

person." Citing as an example *Pima County No. MH-1140-6-93*, 176 Ariz. at 566, 863 P.2d at 285, in which the screening report had been "compiled by" a psychiatrist and the patient's case worker, the state asserts: "A prepetition screening report can be a compilation of information gathered from one person or many different sources." And, as the state correctly observes, § 36-521(B) requires only that "the screening agency shall prepare a report of opinions and conclusions."

¶14 As appellant appears to acknowledge, a prepetition screening affords the first in a series of procedural protections against the possibility of one person's unilaterally securing the commitment of another or of committing for involuntary evaluation or treatment a person who does not meet the statutory criteria for commitment. But appellant fails to acknowledge that it is the involvement of the screening agency that provides this threshold protection. When the "responsible individual" who prepares the application is an employee of the mental health screening agency, each of the specific requirements for the screening can occur, but they may take different forms than they would take if a lay person had submitted the application. And, although the commitment statutes must be strictly construed, "[w]e will not . . . apply the law in a manner resulting in absurdity or impossibility." *Pima County No. MH-1140-6-93*, 176 Ariz. at 568, 863 P.2d at 287.

¶15 Here, although appellant is presumably correct that Maria Johnson did not personally "interview herself" or separately investigate the facts the application alleged, those essential procedural steps described in § 36-501(34) were nonetheless accomplished by the screening agency. Because SMMHC was already familiar with appellant and his chronic

mental illness, it had no need to interview a member of its own staff concerning those facts. To the extent SMMHC needed additional or more current information about appellant, Dr. Vines performed that additional "investigation of [the] facts," as well as the required personal interview of appellant, when he met with appellant on September 16, assessed his deteriorating mental status, and attempted to discuss appellant's need for medication.

¶16 The goals of a prepetition screening, according to § 36-521(A), are to determine three things:

> whether there is reasonable cause to believe the allegations of the applicant for the court-ordered evaluation, whether the person will voluntarily receive evaluation at a scheduled time and place[,] and whether he is persistently or acutely disabled, gravely disabled[,] or likely to present a danger to self or others until the voluntary evaluation.

In the process of personally interviewing and observing appellant, Vines determined on behalf of the screening agency that there was reasonable cause to believe each of the factual assertions required of an application for evaluation—namely, as specified in § 36-520(B)(4), that appellant was, "as a result of a mental disorder, a danger to self or to others [or] persistently or acutely disabled or gravely disabled," and that he would not agree to accept treatment voluntarily. Vines's affidavit, filed contemporaneously with the application and petition for evaluation, supported those assertions by setting forth the following, firsthand observations:

> [Appellant] presents as overtly delusional with paranoid ideations, loosening of associations, an intense affect, agitated, became tearful, believes various family members are being

> murdered, has stopped his psychiatric medications, does not believe he has a mental disorder and refuses treatment.[3]

¶17 Standing alone, the application Maria Johnson completed would not have satisfied or sufficiently complied with §§ 36-501(34), 36-520, and 36-521(A). But, together with the accompanying affidavits of Vines and a second SMMHC employee with personal knowledge of appellant's mental state, the documents collectively established the agency's full compliance with the statutory requirements for a prepetition screening. The documents demonstrated reasonable cause to believe appellant was indeed persistently and acutely disabled, in need of evaluation, and unwilling to accept evaluation or treatment voluntarily—facts appellant does not dispute. Because we find the requirements of §§ 36-501(34), 36-520, and 36-521(A) were satisfied, we conclude appellant was afforded due process of law and reject his contention to the contrary.

¶18 Finally, in an issue raised for the first time on appeal, appellant contends he was denied due process by the state's failure to comply with § 36-523(D), which provides: "A petition and other forms required in a court may be filed only by the screening agency which has prepared the petition." Appellant alleges Dianna Kalandros, who signed and

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[3]The statements in Vines's affidavit were corroborated by a second affidavit, that of Jennifer Ortiz, a peer support specialist at SMMHC, who avowed:

> [Appellant] . . . was loud enough for me to hear clearly him yelling at [D]r. Vines that when he was put in the hospital he lost all his wealth and wants it all back, he also said that he was raped repeatedly and is studying to be a lawyer and will bring the people that raped him to justice. [Appellant] was crying & angry.

apparently prepared the petition for court-ordered evaluation, is "the mental Health Court Liaison[,] . . . an employee of the Pinal County Public Fiduciary and . . . not an employee of the screening agency." Although noting the absence of any "testimonial evidence that Dianna Kalandros is the Pinal County Mental Health Court Liaison," the state has not disputed appellant's assertion. Neither party has explained Kalandros's connection to the case or how she came to sign the petition for court-ordered evaluation, and the record is silent on that point.

¶19 Had appellant timely raised this issue below, the error, if any, could have been rectified.[4] Failing that result, appellant would at least have preserved the issue for appeal. Instead, he did not object,[5] and the petition and order for evaluation were effectively subsumed by the subsequent order for court-ordered treatment from which he has appealed. Furthermore, he does not contest the accuracy of the contents of the petition or show that any

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[4]Despite the language in § 36-523(D) that "only . . . the screening agency [that] has prepared the petition" for evaluation may file the petition and other required forms in court, § 36-521(D) provides that the petition "shall be signed by the person who prepared [it] unless the county attorney performs these functions"; § 36-521(E) permits a screening agency to seek assistance from the county attorney in preparing the petition; and § 36-521(F) provides: "The county attorney may prepare or sign or file the petition if a court has ordered the county attorney to prepare the petition." In the case of a patient admitted for evaluation on an emergency basis, § 36-526(B) provides that "the medical director in charge of the [evaluation] agency shall file a petition for court-ordered evaluation," and the statute waives the requirement of a prepetition screening report in such a case altogether.

[5]Indeed, in the motion to dismiss he filed on September 29, appellant noted—only in passing, without comment or objection—that "Dianna Kalandros, LPC, Mental Health Court Liaison" had filed the petition for evaluation. The sole basis on which he sought dismissal was his assertion that a proper prepetition screening had not been performed in conformity with §§ 36-501(34) and 36-521.

error was more than technical. By failing to present a timely challenge on this ground below, appellant has waived the issue. *See MH 2006-000749*, 214 Ariz. 318, ¶ 18, 152 P.3d at 1205 ("The intended beneficiary of a statute generally may waive the statute's benefit."); *Pima County No. MH-1140-6-93*, 176 Ariz. at 568, 863 P.2d at 287 (declining to consider alleged due process violations first raised on appeal); *cf. In re MH 2007-001264*, 218 Ariz. 538, ¶ 16, 189 P.3d 1111, 1113 (App. 2008) (argument state had not raised below deemed waived).

¶20 Although we find appellant has waived the alleged defect under these specific circumstances, we caution the state that the statutes governing involuntary commitments for mental health evaluation and treatment will indeed be strictly construed and must be scrupulously followed. *In re Coconino County No. MH 1425*, 181 Ariz. 290, 293, 889 P.2d 1088, 1091 (1995); *Pima County No. MH-1140-6-93*, 176 Ariz. at 567-68, 863 P.2d at 286-87. We do not condone even slight deviations from the clear requirements of the statutes and, under different circumstances, would not hesitate to reverse an order for involuntary evaluation or treatment if the procedures clearly specified by statute have not been meticulously observed, particularly if there is any possibility that a patient's due process rights were compromised. *See*, *e.g.*, *MH 2007-001264*, 218 Ariz. 538, ¶¶ 14-17, 189 P.3d at 1113; *In re MH 2006-000023*, 214 Ariz. 246, ¶¶ 10-12, 150 P.3d 1267, 1269-70 (App. 2007); *In re Maricopa County No. MH 2003-000058*, 207 Ariz. 224, ¶¶ 23, 27, 84 P.3d 489, 494, 495 (App. 2004).

Conclusion

¶21 Because we find no merit to appellant's claims that he was denied due process of law, we affirm the court's order of October 1, 2008, requiring him to undergo involuntary mental health treatment.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge